

*This report shall be posted on the Court's website.*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE WORLD TRADE CENTER DISASTER  
LITIGATION

21 MC 100 (AKH)

21 MC 102 (AKH)

21 MC 103 (AKH)

IN RE LOWER MANHATTAN DISASTER SITE  
LITIGATION

IN RE COMBINED WORLD TRADE CENTER AND  
LOWER MANHATTAN DISASTER SITE LITIGATION

USDC SDNY

DOCUMENT

ELECTRONICALLY FILED

DATE FILED: 7/8/11

### **PAYMENT STATUS UPDATE FROM THE ALLOCATION NEUTRAL**

The Allocation Neutral respectfully submits this status update regarding payments made and to be made pursuant to the World Trade Center Litigation Settlement Process Agreement, As Amended ("Settlement Process Agreement"). Exhibit 1 summarizes the information regarding payment status contained in this report. The Exhibit was originally submitted in the "PAYMENT STATUS REPORT FROM THE ALLOCATION NEUTRAL" dated March 9, 2011 ("March 9th Report"), and was subsequently updated and submitted to the Court on April 13<sup>th</sup> and May 19<sup>th</sup>, 2011. This narrative supplements Exhibit 1 and the previous Reports. For the Court's convenience, capitalized terms not defined herein shall have the meaning ascribed to them in the Settlement Process Agreement.

As explained below, the Allocation Process continues to move forward, with approximately \$102 million paid to plaintiffs thus far.

### **Status of Initial Payments**

Twenty-two payment waves have now been completed. As of this report, 9,928 Primary Plaintiffs and 5,341 Derivative Plaintiffs have appeared on payment instruction reports issued to

the WTC Captive. All payment instruction reports, once issued to the WTC Captive, have been processed by the WTC Captive without delay. Over 98% of Initial Payments have been made. A few outstanding issues remain to be resolved by the Parties – and not the Allocation Neutral – in order to complete all Initial Payments. The Parties continue to make progress on resolving these outstanding issues, and the Allocation Neutral will include the remaining Initial Payments on subsequent payment instruction reports as soon as the Parties notify the Allocation Neutral that the outstanding issues are resolved.

The March 9th Report (at 3) outlined the conditions for payment to occur. As of this report, the items needing resolution are:

- Stipulations of dismissal (*see* Settlement Process Agreement, Ex. T) for 4 plaintiffs;
- Opt-In documents for 5 plaintiffs;
- Claim Form deficiencies for 7 plaintiffs;<sup>1</sup>
- Work Verification deficiencies for 11 plaintiffs;
- Lien resolution for 78 plaintiffs; and
- Estate or fee lien holds for 179 plaintiffs.

The Allocation Neutral can only issue payment instructions for a claimant when all of the above conditions have been satisfied. As indicated above and in Exhibit 1's "Overall Claim Milestone Status" table, the most significant obstacles to Initial Payments are estate and lien holds, which collectively account for nearly ninety percent (90%) of all current impediments to Initial Payments. Plaintiffs' counsel are aware of and working to resolve these issues.

---

<sup>1</sup> Claim Form and Qualifying Medical Record submissions were due by March 28, 2011.

**Status of Additional Payments**

Under the terms of the Settlement Process Agreement, there are no future payments due to Tier 1 claimants. Tier 2, Tier 3, and Tier 4 claimants, however, have received or will receive the following payments, in addition to their respective Initial Payments:

- For Tiers 2 and 3: Accelerated Final Payments;
- For Tier 4: Interim Payments and Final Distributions;
- For Tiers 2, 3 and 4: Permanent Disability Fund awards, if applicable;
- For Tiers 2, 3 and 4: Mixed Orthopedic Injury payments, if applicable; and
- For Tiers 2, 3 and 4: Qualifying Surgery payments, if applicable.

**Tier 2 and 3 Accelerated Final Payments:** The Allocation Neutral, in accordance with the terms of the Settlement Process Agreement, began making Accelerated Final Payments with the Wave 8 payment instruction report issued on March 30, 2011, to the WTC Captive. Accelerated Final Payments have continued to appear on each subsequently issued weekly payment instruction report and, as of this report to the Court, Accelerated Final Payments to 2,047 Primary Plaintiffs and 1,120 Derivative Plaintiffs have appeared on a payment instruction report. This represents Accelerated Final Payments to more than 90% of those plaintiffs claiming Tiers 2 or 3. The WTC Captive has processed these payment instructions without delay. The Allocation Neutral expects to make all Accelerated Final Payment determinations promptly upon resolution of deficiencies, Reconsideration Requests, waivers of Reconsiderations Requests, and Appeals to the Claims Appeals Neutral.

**Tier 4 Interim Payments and Final Distributions:** Pursuant to the terms of the Settlement Process Agreement, the next payment for a Tier 4 claimant after the Initial Payment is the Interim Payment. Interim Payments for Tier 4 claimants are dependent not only upon

satisfaction of all payment conditions, as described above, but also upon Final Total Scores being established for approximately 40% of all Primary Plaintiffs who claim a Tier 4 Qualifying Injury in a given Master Docket after the Allocation Neutral's evaluation of each such claimant's Claim Form and Qualifying Medical Records. The Allocation Neutral is to instruct the WTC Captive to make Interim Payments to Verified Tier 4 Primary Plaintiffs with Final Total Scores in a Master Docket and to corresponding Derivative Plaintiffs in the amount of 40% of the projected value of each verified Tier 4 plaintiff's Final Distribution in that Master Docket. 3,200 Tier 4 Determination Notices and 1,389 Tier 4 Deficiency Notices have been issued to date.<sup>2</sup> The 40% threshold for Master Docket 100 has been met and Interim Payments appeared accordingly on the Wave 21 Payment Instruction Report the week of June 27, 2011. Interim Payments for 2,161 Primary Plaintiffs and 1,247 Derivative Plaintiffs have appeared on the Payment Instruction Report.

Following his or her Interim Payment, a Tier 4 claimant will receive a Final Distribution at the end of the Allocation Process. Final Distributions are available only to Verified Tier 4 Primary Plaintiffs and corresponding Derivative Plaintiffs and are subject to the Point System

---

<sup>2</sup> For the Court's reference, a Tier 4 "Determination Notice" sets forth the Allocation Neutral's determination regarding a Tier 4 claimant's Qualifying Injury(ies) and his or her Final Total Score. The Final Total Score is calculated using the Base Points assigned to the claimant's Primary Qualifying Injury (*see* Settlement Process Agreement, Ex. C) as determined by the Allocation Neutral following its Claim Form and Qualifying Medical Records review and includes adjustments to Base Points to account for the claimant's Adjustment Factor responses in his or her sworn Claim Form. Determinations Notices are posted to the Allocation Neutral's web portal when complete and thereafter are immediately accessible by counsel.

"Deficiency Notices" reflect the Allocation Neutral's finding(s) that a plaintiff's Claim Form and/or Qualifying Medical Records are deficient in some respect. These, too, are posted to the Allocation Neutral's web portal and thereafter are immediately accessible by counsel. Upon receipt of a Deficiency Notice, plaintiff's counsel has up to 25 days to cure the deficiency. Cures often require the submission of or reference to additional Qualifying Medical Records.

and Final Distribution formula set forth in the Settlement Process Agreement. Final Total Scores were projected to be determined within 180 days of the Final Settlement Agreement Effective Date (which was January 5, 2011). Due to extension of the Claim Form submission deadline and the ongoing resolution of deficiencies (see Exhibit 1) additional time will be required to determine all Final Total Scores. However, Final Distributions are expected to be completed on time within one year of the Final Settlement Agreement Effective Date (the deadline under the Settlement Process Agreement "to the extent practicable as determined by the Allocation Neutral and the Claims Appeal Neutral"), subject to resolution of Reconsideration Requests and Appeals.

#### **Status of Other Elements of Recovery**

**Permanent Disability Fund Awards:** Those claimants who are entitled to a Permanent Disability Fund ("PDF") award will receive that payment after the Allocation Neutral has reviewed all PDF applications and issued corresponding award determinations. The Allocation Neutral has expedited all PDF reviews in accordance with the Settlement Process Agreement, and now expects to issue Determination Notices for PDF claims, along with associated Qualifying Injuries for those same claimants, in July 2011. PDF award payments will be made pursuant to the terms of the Settlement Process Agreement. Due to the possibility of Reconsideration Requests and Appeals submitted by claimants who claim PDF eligibility and/or who dispute their PDF score as determined by the Allocation Neutral, it is estimated that PDF payments will be made by September 30, 2011. Efforts will be made to move PDF payment forward as expeditiously as possible.

**Mixed Orthopedic Injury Payments:** Based on current Claim Form reviews, there are more than 100 claimed Mixed Orthopedic Injuries. The Allocation Neutral anticipates completing Mixed Orthopedic Injury determinations in July 2011. Because Mixed Orthopedic

Injuries may not be the only injury alleged by a particular claimant, the Allocation Neutral intends to issue determinations on these claimants' entire claim before issuing payment determinations on the Mixed Orthopedic Injury component. Due to the possibility of Reconsideration Requests and Appeals submitted by these claimants and their counsel, it is estimated that Mixed Orthopedic Injury payments will be made by September 30, 2011.

**Qualifying Surgery Payments:** As of this report 44 Qualifying Surgeries have appeared on the Payment Instruction Report. Qualifying Surgery claims are reviewed concurrently with Qualifying Injuries, as Qualifying Surgery payments are conditioned upon corresponding Qualifying Injury determinations. Qualifying Surgery determinations for which Reconsideration Requests are waived should be finalized at the earliest the week of August 21, 2011. Resulting payments will be made with remaining Accelerated Final Payments for Tiers 2 and 3 and with Interim Payments and Final Distributions for Tier 4.

**London Marine insurance settlement:** The parties to the London Marine insurance settlement recently executed a final settlement agreement. Pursuant to that agreement, the London Marine insurers deposited \$28 million into the Separate Account on June 9, 2011. Of this amount, \$27.5 million is designated for payment of Marine Plaintiffs' claims and \$500,000 will be used for Allocation Costs. Shortly after that deposit, initial marine insurance payments were made to settling Primary Plaintiffs eligible to participate in the London Marine insurance settlement. To date, 480 such Primary Plaintiffs have appeared on the Payment Instruction Reports. Additional marine insurance payments will be made to marine-eligible Verified Tier 4 Primary Plaintiffs with their Final Distributions.

### **Expense Audits**

The Allocation Neutral has conducted pre-payment expense audits as described in the March 9th Report. *See* March 9th Report at 7-8.

A total of 455 out of the 10,116 Primary Plaintiffs who the Parties agree have opted into the settlement were randomly selected for pre-payment audit. The Expense Audit is 100% complete. As each audit was completed for a particular claim, the claimant was included in the next weekly payment instruction report. As of this report, there are no claims for which payment is being held due to an unresolved or incomplete expense audit.

### **Random Audits**

The Allocation Neutral, in accordance with the terms of the Settlement Process Agreement, has selected for Random Audit 5% of Primary Plaintiffs who claim a Tier 3 Qualifying Injury and 5% of Primary Plaintiffs who claim a Tier 4 Qualifying Injury based upon all submitted Claim Forms. Plaintiffs' counsel have been notified of the Random Audit selection by the Allocation Neutral and have been directed to the Allocation Neutral's web portal for completion of the requirements specified in Section XI.M of the Settlement Process Agreement.

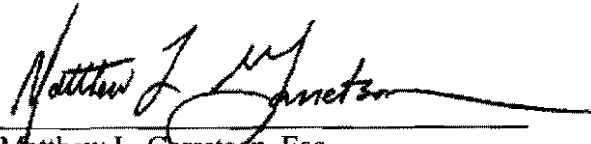
As of this report, 100% of Tier 3 Random Audits have been completed and 72% of Tier 4 Random Audits have been completed. Based upon the Random Audits completed to date, the Allocation Neutral has not issued any requests for Targeted Audits at this time.<sup>3</sup>

The Allocation Neutral will continue to update the Court throughout the payment and related audit processes.

---

<sup>3</sup> "Targeted Audits" are only required if more than 10% of Tier 3 and/or Tier 4 claims selected for Random Audits result in findings by the Allocation Neutral of material representation, material omission or material concealment of the type described in Section XI.M of the Settlement Process Agreement. In such circumstances, the Allocation Neutral shall conduct a "Targeted Audit" of another 5% of the affected Tier or Tiers.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Matthew L. Garretson", with a long horizontal flourish extending to the right.

Matthew L. Garretson, Esq.  
Garretson Resolution Group, Inc.  
Allocation Neutral

July 7, 2011



**Exhibit 1 - WTC Operational Metrics Dashboard**  
**7/7/2011**

PAYMENT INFORMATION	Issue Date	Payments Made	Payments Missed
<b>Initial Payments</b>			
Wave 1	1/27/2011	1,548	625
Wave 2	2/2/2011	1,638	926
Wave 3	2/14/2011	1,739	959
Wave 4	3/8/2011	1,799	1,006
Wave 5	3/10/2011	1,102	590
Wave 6	3/16/2011	614	321
Wave 7	3/23/2011	588	350
Wave 8	3/30/2011	466	256
Wave 9	4/6/2011	129	65
Wave 10	4/13/2011	52	25
Wave 11	4/20/2011	59	41
Wave 12	4/27/2011	32	17
Wave 13	5/4/2011	90	79
Wave 14	5/11/2011	40	47
Wave 15	5/18/2011	22	26
Wave 16	5/25/2011	1	2
Wave 17	6/1/2011	6	2
Wave 18	6/8/2011	1	0
Wave 19	6/15/2011	0	3
Wave 20	6/22/2011	2	1
Other Waves - TBD		TBD	TBD
<b>**** Totals To Date</b>		<b>9,928</b>	<b>5,341</b>
<b>Tier 2 - Accelerated Final Payments</b>			
	Issue Date		
Wave 8	3/30/2011	125	75
Wave 9	4/6/2011	546	321
Wave 10	4/13/2011	116	58
Wave 11	4/20/2011	286	152
Wave 12	4/27/2011	312	164
Wave 13	5/4/2011	23	10
Wave 14	5/11/2011	18	6
Wave 15	5/18/2011	15	8
Wave 16	5/25/2011	14	4
Wave 17	6/1/2011	10	5
Wave 18	6/8/2011	4	0
Wave 19	6/15/2011	3	1
Wave 20	6/22/2011	7	4
Wave 21	6/30/2011	1	1
Wave 22	7/6/2011	1	1
Other Waves - TBD		TBD	TBD
<b>**** Totals To Date</b>		<b>1,481</b>	<b>810</b>

**Exhibit 1 - WTC Operational Metrics Dashboard**  
**7/7/2011**

PAYMENT INFORMATION		Payments Made	
	Issue Date	Primary Plaintiffs	Derivative Plaintiffs
<b>Tier 3 - Accelerated Final Payments</b>			
Wave 8	3/30/2011	42	22
Wave 9	4/6/2011	123	75
Wave 10	4/13/2011	37	20
Wave 11	4/20/2011	145	88
Wave 12	4/27/2011	168	82
Wave 13	5/4/2011	8	3
Wave 14	5/11/2011	8	5
Wave 15	5/18/2011	2	1
Wave 16	5/25/2011	5	2
Wave 17	6/1/2011	5	2
Wave 18	6/8/2011	13	7
Wave 19	6/15/2011	2	1
Wave 20	6/22/2011	5	1
Wave 22	7/6/2011	3	1
Other Waves - TBD		TBD	TBD
<b>**** Totals To Date</b>		<b>566</b>	<b>310</b>
<b>Tier 4 - Interim Payments</b>			
Wave 21	6/30/2011	2,115	1,219
Wave 22	7/6/2011	46	28
Other Waves - TBD		TBD	TBD
<b>**** Totals To Date</b>		<b>2,161</b>	<b>1,247</b>
<b>Tier 4 - Final Distribution Payments</b>			
	Issue Date	Estimated Time	December, 2011
All 21mc100 Plaintiffs - TBD		TBD	TBD
All 21mc102 Plaintiffs - TBD		TBD	TBD
All 21mc103 Plaintiffs - TBD		TBD	TBD
Other Elements of Recovery		Primary Plaintiffs	Derivative Plaintiffs
		Payments Made	Payments Made
<b>Permanent Disability Fund Awards</b>		Estimated Time - Q3, 2011	
Single Payment Wave - TBD		TBD	N/A
<b>Medical Orthopedic Injury Payments - TBD</b>		Estimated Time - Q3, 2011	
Single Payment Wave - TBD		TBD	N/A
<b>Qualifying Surgery Payments - TBD</b>			
	Issue Date		
Wave 15	5/18/2011	8	N/A
Wave 16	5/25/2011	9	N/A
Wave 17	6/1/2011	5	N/A
Wave 18	6/8/2011	1	N/A
Wave 21	6/30/2011	7	N/A
Wave 22	7/6/2011	14	N/A
Other waves - TBD		TBD	N/A
<b>**** Totals To Date</b>		<b>44</b>	<b>N/A</b>
<b>Private Insurers - Payments</b>			
	Issue Date		
Wave 19	6/15/2011	478	N/A
Wave 20	6/22/2011	2	N/A
<b>**** Totals To Date</b>		<b>480</b>	<b>N/A</b>
<b>**** Grand Totals To Date</b>		<b>14,660</b>	<b>7,708</b>

Ability to make payments subject to deficiency cures, reconsiderations and appeals

**Exhibit 1 - WTC Operational Metrics Dashboard**  
**7/7/2011**

EXPENSE AUDIT INFORMATION	
No. of firms in settlement	26
No. of claimants selected for random audit	455
No. of audits completed	455
% of completion	100%

RANDOM AUDIT (Medical Records)	
No. of firms in settlement	26
No. of Tier 3 claimants selected for random audit	36
No. of Tier 3 cases with all medical records reviewed	36
% of T3 complete (case complete and RA complete)	100%
No. of Tier 4 claimants selected for random audit	282
No. of Tier 4 cases with all medical records reviewed	104
% of T4 complete (case complete and RA complete)	72%

LIENS	# Claimants Entitlement Status Verified	# Claimants Entitled To Medicaid	# Liens Waived or completed at \$0	# Liens Pending ****
Medicare ** obtained full waiver from Medicare**	N/A	Full Waiver	N/A	N/A
Medicaid	9,146	1,056	1,054	2
	# Liens Reported	# Liens Waived or Discharged	# Liens Resolved	# Liens Pending ****
Workers' Comp	1,072	613	101	358
*** Remaining Workers' Comp Liens will be resolved once gross award is determined				

MEDICAL RECORD REVIEW	Determination Notices Issued	Deficiencies Issued*
Tier-2	1,532	138
Tier-3	614	94
Tier-4	3,220	1,389

\* Deficiencies are reported at an injury level

CLAIMS SUBMISSION	
# of officially submitted claims	10,114
# of claims yet to be submitted	0
# of claims not expected to be submitted	2
% of completion (of expected claims)	100.0%
Opt-In total (confirmed by the Parties)	10,116

Overall Claim Milestone Status	# Not Complete (Reasons for non-payment)	Explanation
Stipulation of Dismissal	4	Stipulations of Dismissal Not Received per Exhibit T
Opt-in Documents	5	Originals Not Provided to the WTC Captive or Outstanding Deficiencies
Claim Submission	7	Claim submission end date 3/28/11. Breakdown of the 7: 2 claim forms not received; 1 claim form deficiency; 1 review pending; 3 claim forms incomplete
Work Verification	11	Not Received or Contain Deficiencies or Discrepancies
Lien Resolution	78	Medicaid and/or Workers Comp Liens have been identified and are not yet resolved. Excludes WGENB
Estate or Other Lien Documentation (if applicable)	179	Need additional documentation (court orders, etc.) before funds can be released